IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2164 OF 1999

Shri.Suresh Bhikanrao Patil]
Age about 31 years]
C/o Dr.C.B.Deshmukh]
Pushpalata Apartment,]
Ekta Nagar, Pumping Station]
Gangapur Road, Nasik]
District Nasik]..Petitioner
(Ori.Respondent
No.1)

Vs.

1) Nasik Municipal]
Corporation, Nasik]
]
2) The Commissioner,]
Nasik Municipal]
Corporation, Nasik]
]
3) The State of Maharashtra]
(Notice for serving]
on the Respondent Nos.1]
and 2 be served on]
Respondent No.1 and]
and notices on]
respondent no.3 to be]
served on the office of]
Additional Government]
Pleader, A.S.Writ Cell]
High Court, Bombay]
]
4) Ms.Meera Tukaram]
Gotishe, Age Adult,]
Residing at village]
Deolali.]..Respondents

Mr.D.R.More Advocate for petitioner
Mr.V.A.Gangal, Advocate for respondents 1 and 2
Ms.S.S.Bhende AGP for Respondent 3.

CORAM: SMT.RANJANA DESAI &
SMT.V.K.TAHILRAMANI,JJ.

DATE : SEPTEMBER 29, 2006

ORAL JUDGMENT (PER SMT.RANJANA DESAI,J.):

1. The petitioner has passed diploma in civil engineering in the year 1990 and has secured 67% of marks. He belongs to Other Backward Class category. In this petition, the petitioner has prayed that respondent 2 i.e. the Commissioner, Nasik Municipal Corporation be directed to forthwith submit proposal to the General Body of respondent 1-Nasik Municipal Corporation for his appointment as Junior Engineer (Civil).

2. Few facts which give rise to the present petition, may be shortly stated:

. In 1998, 1st respondent issued an advertisement for filling up vacancies of 35 posts of civil engineers and 3 posts of mechanical engineers. As per the said advertisement, the petitioner appeared for the written test. In 35 posts, the position of reservation was as under:-

1. Scheduled Caste - 3

2.	Scheduled Tribe	- 5
3.	Nomadic Tribe (A)	- 1
4.	Nomadic Tribe (B)	- 1
5.	Nomadic Tribe (C)	- 2
6.	Nomadic Tribe (D)	- 1
7.	Special Backward Class	- 1
8.	Other Backward Class	- 4
9.	General	-17

. Therefore, 17 posts were reserved for open category. There was no reservation for lady candidates. According to the petitioner, in pursuance of the advertisement, he appeared for written examination. His name figured in the successful 94 candidates having passed on merit in the written examination. Thereafter, oral interview was held. A merit list of 82 candidates was prepared taking into consideration the marks obtained by each of the candidates in the written examination as well as oral examination.

3. Thereafter, after following the necessary procedure, the list of 82 candidates as per the merit list prepared by the office was placed for

consideration of General Body. In the said merit list, the petitioner's name appeared at serial No.22. It is clearly mentioned in the list that the petitioner has secured 67.3% marks inclusive of written and oral examination.

4. Admittedly, the appointments were made purely on merit and candidates at serial Nos.1 to 17 were appointed on the posts reserved for Open category. Candidates at serial Nos. 18 to 21 were selected on the posts reserved for Other Backward Class. The name of Prakash Trambakrao Kadave was appearing at serial No.21. It appears that writ petition being Writ Petition No.7168 of 1998 was filed by two persons challenging the process of recruitment. In that petition, on 24th April, 1999 this Court passed an interim order. One post was ordered to be kept vacant. Therefore, Prakash Kadave who was at serial No.21 was not given appointment letter.

5. Admittedly, one Hemant Desai candidate at serial No.13 and one Rohini Pawar candidate at serial No.16 did not join the posts. These two posts of open category remained vacant. According to the petitioner, since he was at serial No.22 and as such

he was next on the merit list, he applied to respondent 2 for seeking appointment as a regular employee. However, respondent 2 proposed a resolution seeking approval of the general body for issuance of appointment letter to Prakash Kadave who was at serial No.21 and who was not given appointment because of this Court's order, to keep one post vacant. Respondent 2 also proposed a resolution seeking approval of the general body for issuance of appointment order to Meera Gotishe respondent 4 herein, whose name appeared at serial No.75. The grievance of the petitioner is that the advertisement did not specify any reservation for women candidates. According to the petitioner, all appointments were made purely on merit. Rohini Pawar who was at serial No.16 was not given appointment because, she was a lady candidate and therefore, there was no reason for the respondents to override the petitioner's claim and appoint Ms.Meera Gotishe who was a less meritorious candidate. According to the petitioner, this is a clear case of discrimination. The petitioner contends that there is a violation of his rights under Article 14 of the Constitution of India. The petitioner has, therefore, approached this Court for

redressal of his grievance.

6. We have heard the learned counsel for the parties. Mr. More, the learned counsel for the petitioner has reiterated the submissions made in the petition. He pointed out that admittedly Prakash Kadave and Meera Gotishe did not join the service and therefore, the petitioner's rightful claim should have been considered favourably by the respondents. He submitted that therefore, this is a fit case where appropriate directions be given to the respondents.

7. We find substance in the submissions made by Mr.More. Appointments of all the 21 candidates were made on merit. The petitioner was at serial No.22. One post was ordered to be kept vacant by this Court by order dated 25th November, 2004 (Coram:A.P.Shah and S.C.Dharmadhikari,JJ.) passed in the petition i.e. Writ Petition No.7167 of 1998 filed by one of the candidates challenging the recruitment process. Therefore, Prakash Kadave who was at serial No.21 was not appointed. Candidate at serial No.13 and 16 did not join duties. Therefore, proposal was submitted for appointment of Prakash Kadave who was

at serial No.21 and Meera Gotishe who was at serial No.75. Admittedly, neither Prakash Kadave nor Meera Gotishe joined the service. In this connection, we may refer to the affidavit filed by the petitioner in this Court stating that Prakash Kadave and Meera Gotishe have not joined the duty. The petitioner is admittedly the most meritorious candidate among the available candidates. It is surprising why his case was not considered for appointment. Besides, on 25th November, 2004 the petition in which the interim order was passed directing that one post be kept vacant, has been dismissed. That order, therefore, stands vacated.

8. On 22nd June, 1999 this Court issued Rule on the present petition and granted interim relief. This Court noted that the petitioner belongs to the reserved category of Other Backward Class whereas Meera Gotishe 4th respondent, does not fall within the number of posts reserved for Scheduled Caste though she belongs to Scheduled Caste category. This Court further noted that the advertisement gives a break-up of the total number of 35 posts reserved for Junior Engineers and for Scheduled Caste, only 3 posts are reserved whereas for Other

Backward Class, 4 posts are reserved. This Court further noted that on merits the petitioner is within the four posts reserved for Other Backward Class and respondent 4 does not fall within the three posts reserved for Scheduled Caste. This Court clarified that in view of this position, Rule was being issued. By way of interim relief, this Court directed respondent 1 to appoint the petitioner forthwith in the post reserved for Other Backward Class in Junior Engineer cadre. Admittedly, pursuant to this order, the petitioner was appointed in the post reserved for Other Backward Class as Junior Engineer (Civil) and is working as such till date.

9. It is an admitted position that on 20th April, 1999 the select list has been cancelled. However, in the peculiar facts and circumstances of this case and in the interest of justice, in our opinion, the petitioner who is undoubtedly eligible person, should be continued in the post reserved for Other Backward Class in Junior Engineer cadre where he is working from the date of order passed by this Court i.e. 22nd June, 1999. To the petition, the petitioner has annexed copies of his service record

which does indicate that petitioner has rendered good service to respondent 1. It appears that 1st respondent has also issued appreciation letter to him. In our opinion, since the petitioner was at serial No.22 in the merit list; and since persons at serial Nos. 13 and 16 opted out and person at serial No.21 did not join the service, in the nature of things, the petitioner who is a meritorious candidate, ought to have been appointed in the post reserved for Other Backward Class in Junior Engineer cadre (Civil).

10. Principally for this reason, it appears to us that this Court had by interim order, directed that he should be appointed in the post reserved for Other Backward Class in Junior Engineer cadre (Civil).

11. In our considered opinion, therefore, in the above facts, the 1st respondent must continue the petitioner in the post in which he is presently working. Order accordingly.

12. Petition is allowed in the above terms.

[SMT.RANJANA DESAI, J.]

[SMT.V.K.TAHILRAMANI,J.]